

**Department of Mines, Minerals and Energy
Division of Mined Land Reclamation
and
Division of Mines**

**Guidelines for Coal Removal
Associated with Government Financed
Construction**

Guidelines for Coal Removal Associated with Government Financed Construction Projects (Such as the Coalfield Expressway)

The Department of Mines, Minerals and Energy (DMME), Division of Mined Land Reclamation (DMLR), and Division of Mines (DM) have developed these guidelines to provide assistance making regulatory determinations for the removal of coal associated with government financed construction projects and in particular the Coalfield Expressway. These guidelines may be used for all government financed construction projects. In this document the term “Project” will apply to all government financed construction exemptions.

It is known that the route of Coalfield Expressway will cross areas containing known coal reserves. Some of these areas will be under existing permits while others will not be permitted. Both DMLR and DM have regulatory authority for the mining of coal. DMLR regulates the environmental and public health and safety aspects of coal mining while DM regulates the worker safety aspect of coal mining. DMLR issues surface coal mining permits and inspects coal mining sites. DM issues mine licenses and also inspects coal-mining sites for safety matters.

For purposes of clarity, these guidelines are broken down into two sections. The first section provides guidance on DMLR regulatory requirements and the second section provides guidance on DM regulatory requirements. **In order to make a determination that a Project is exempt from both DMLR and DM permitting and licensing requirements, certain information must be submitted for evaluation. The same information may be submitted to both divisions.**

For the purpose of these guidelines the Project construction area will be defined as the area inside the right-of-way, including service roads, equipment staging areas, access and exit ramps, intersections with other Projects as well as any waste and borrow areas needed for construction. Any coal removal areas outside these areas will not be deemed Project construction activities and will be subject to normal regulatory requirements of DMLR and DM.

DMME Procedures for Determining Regulatory Requirements

Upon receipt of a written request for site exemption from DMME mine licensing and permitting regulations, DMME will –

1. Within two working days designate a team to review the exemption request. The team will at a minimum consist of one representative each from DMLR and DM.
2. The team will review the request, all applicable data, visit the site if necessary, and make the determination as to whether an exemption is warranted.
3. Within seven working days, the team will inform the party(ies), in writing, of the exemption determination.

4. For additional guidance see Attachments A (DMLR Procedure 2.1.06: Exemptions for Government Financed Projects) and B (DM Guidelines for Application of Regulatory Standards Manual – Licensing of Mines).

DMLR Regulatory Requirements

GOVERNMENT FINANCED EXEMPTIONS

Under the **Virginia Coal Surface Mining Control and Reclamation Act of 1979** and the **Virginia Coal Surface Mining Reclamation Regulations**, anyone that conducts surface coal mining and reclamation operations must first obtain a surface coal-mining permit from DMLR; however, there are exceptions to that requirement.

§ 4 VAC 25-130-700.11(a)(3) of the regulations provides an exception for, *“The extraction of coal as an incidental part of Federal, State or local government-financed Project or other construction in accordance with Part 707.”* The construction associated with the Coalfield Expressway or any other government-financed project would qualify for this Government Financed Exemption (GFE). Part 707 of the regulations spells out the information required for the exemption.

In order to facilitate the determination of Project construction sites that may qualify for exemptions, DMLR will exercise its authority under § 4 VAC 25-130-700.11(b) which reads in part *“The division may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The division shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the division shall consider, any written information relevant to the determination.”*

Upon DMLR becoming aware of proposed Project construction activities that will result in coal removal, DMLR will, within two working days initiate an exemption determination review for the areas of coal removal associated with the Project construction.

If prior to DMLR initiating an exemption determination review, DMLR receives a request for such a determination, then DMME will initiate that review within two working days as noted above

The regulatory authority for granting a GFE is found at:

§ 4 VAC 25-130-700.11. *Applicability.*

(a) Except as provided in Paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except--

(3) *The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Part 707;*

(4) *The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with Part 702.*

(b) The division may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The division shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the division shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

PART 707. Exemption for Coal Extraction Incident to Government-Financed Highway Or Other Construction.

4 VAC 25-130-707.11. Applicability.

(a) Extraction of coal which is an incidental part of government-financed construction is exempt from the Act and this chapter.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy Paragraph (a) of this section shall not proceed until a permit has been obtained from the division.

4 VAC 25-130-707.12. Information to be maintained on site.

Any person extracting coal incidental to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show--

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) *The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.*

GUIDANCE FOR EXISTING DMLR PERMITS

When land disturbances for construction activities and/or coal extraction incidental to any government financed project will occur on an existing DMLR issued mining permit, the procedures and guidelines described in the table and narratives below should be followed.

The DMLR must make its determination that the Project is exempt and release the permit prior to disturbances of the areas by the Project.

Existing DMLR issued mining permits may be encountered by Project land disturbances in a variety of operational phases. For example, the permit may be approved with boundaries established but mining not yet started. Active mining may be underway on the permit. The permit may be in the process of reclamation or have reclamation completed. The various operational phases will require a different series of DMLR administrative processes for release of a permit or permitted areas prior to Project disturbances. The following table and narratives provide guidance.

	OPERATIONAL PHASE PRIOR TO PROJECT DISTURBANCE	Modification to mine plan will be necessary.	Modification to reclamation/drainage control plans will be necessary.	Post Mining Land Use Change will be necessary.	Revision application to release area/bond submitted to DMLR.
1	Permit area approved but mining not started.				X
2	Permit area being actively mined.	X	X	X	X
3	Permit area being actively reclaimed.		X	X	X
4	Permit area reclaimed and waiting for bond release.			X	X
5	Underground mining areas (PMU) to be encountered.	X			

Operational Phase 1 – Permit area approved but mining not started

Acreage may be deleted by a revision without public participation. The permittee should allow 30 days for the application review and approval process. Bond adjustment may be necessary to the permit due to acreage deletion. Operations and drainage control plans will need to be reviewed but may not need to be changed due to the acreage deletion.

Operational Phase 2 – Permit area being actively mined

Acreage cannot be deleted until modifications to the operations, reclamation, and post mining land use are approved and implemented. The modifications will be made via revision applications that will require public participation. The permittee should allow 180 days for the application review and approval process.

Operations could receive an extension on contemporaneous reclamation timeframes to allow for time to modify permit and for Project construction to approach.

If the active mining operations within the Project corridor were taken over by the Project and information supplied to document GFE, acreage could be deleted via the same processes as in situation 1, but the existing DMLR permit would still need a revision(s) to re-organize operations, drainage, and reclamation plans.

Operational Phase 3 – Permit area being actively reclaimed

Acreage cannot be deleted until reclamation and post mining land use changes are approved and implemented. The modifications will be made via revision applications that will require public participation. The permittee should allow 180 days for the application review and approval process.

Operations could receive an extension on contemporaneous reclamation timeframes to allow for time to modify permit and time for Project construction to approach.

Operational Phase 4 – Permit area reclaimed and awaiting bond release

Acreage cannot be deleted until post mining land use changes are approved. Bond release applications and land use revisions would be the types that require public participation. After post mining land use changes are approved, and in order to expedite the release of the site, the permittee should submit the bond release application up to 90 days prior to the Project construction encountering the permitted area.

Operational Phase 5 – Underground mining areas to be encountered

Deletion of underground mining areas and modification to underground mining plans will be necessary via revision application. The application should not require public participation. The permittee should allow 30 days for the application review and approval process.

DM Regulatory Requirements

The Coal Mine Safety Laws of Virginia, § 45.1-161.57, requires a mine license prior to the “*operation of a mine*”.

As defined in § 45.1-161.8 of the Code of Virginia, as amended by House Bill No. 2573 (effective March 7, 2005), “*Mine*” means any underground coal mine or surface coal mine. *Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the coal extracted or excavated there from is offered for sale or exchange, or used for any other commercial purposes. The area in which coal is excavated under an exemption to the permitting requirements of § 45.1-234 shall not be a mine.*

The definitions under § 45.1-161.8 also describe in detail the meanings of “*surface coal mine*” and “*underground coal mine*”. The DM recognizes that in many cases where coal removal is being undertaken for sale in effect may not be a “*coal mine*”. A mine license is not required for a site conducting coal removal for sale if that site is not principally a coal mine. Excavation work for sites such as project construction, business construction, and home construction will not be considered a coal mine as long as the coal removed is essential for the site construction. However, if the site construction expands beyond the area relevant for the project construction site, a mine license may be required.

In determining whether a site is a coal mine, the DM will evaluate each case on its own merit. The parties requesting the exemption from obtaining a mine license should submit relevant materials such as company name, principal officers, maps, plans, excavation methods, and bore hole date. The DM will examine submitted materials and then make a determination whether the planned coal removal requires a mine license.

ATTACHMENT A

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

OBJECTIVE AND INTENT:

To ensure that a government financed project, which may involve the removal of coal, meets the exemption criteria of Part 4 VAC 25-130-707 of the regulations and complies with the DMME/DMLR/DM “Guidelines for Coal Removal Associated with Government Financed Construction”.

PROCEDURES:

General - Determining Regulatory Requirements

Upon receipt of a written request for site exemption from DMME mine licensing and permitting regulations, a DMLR/DM team consisting of at least one representative from DM and the DMLR Reclamation Program Manager (RPM) will –

1. Review the request and all applicable data; visit the site if necessary; and, make the determination as to whether an exemption is warranted.
2. Within seven working days, inform the party (ies), in writing, of the exemption determination.

DMLR Initiates Exemption Determination Process -

A Field Inspector may come upon a construction project, which may plan to remove or is removing coal. If the extraction of coal is incidental to a government financed construction project, it is exempt from the coal surface mining regulatory program as long as the operations comply with the terms and conditions of the project.

When finding a project that is not under a DMLR permit, or has not obtained an exemption determination, the Inspector should initiate an inspection of the site (see Procedure #2.1.03) to determine whether the project is exempt from the Act. The Inspector shall contact and coordinate with DM to determine whether a mine license application for the site has been submitted or is required.

Whenever the project removes more than 250 tons of coal, certain documents must be maintained at the project site. The documents should include the information required by 4 VAC 25-130-707.12 of the regulations.

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

In reviewing the project information, the Inspector should focus on the documents which:

- describe the construction project;
- set forth the exact location of the construction, right of way, or boundaries of the area which will be directly affected by the construction;
- lists the government agency which is financing the project (noting the kind and amount of public financing, and the percentage of the entire construction costs represented by government financing);
- identifies the government agency contact person; and,
- may indicate the anticipated amount of coal which may be removed during the project; whether such coal would be commercially sold; and whether the coal removal is necessary for the project completion.

The Inspector should contact the person representing the government financing authority for verification of the information and to ensure any coal extraction does not go beyond the scope of the project. The Inspector shall monitor the project at least monthly to verify that the operation continues to meet the exemption criteria. These reviews shall be documented in an inspection report (**DMLR-ENF-044**) and forwarded to the Area Supervisor.

If the Inspector's investigation reveals that the construction company's coal extraction is no longer exempt, action shall be initiated per Procedure #2.1.03.

Request for Exemption Determination Submitted to DMLR -

Each request for an exemption determination shall be referred to the DMLR/DM team. Upon receipt of the request, DMLR's representative, the RPM in coordination with DM,

- shall determine whether the request is complete.
- may request additional information from the party requesting the exemption.
- shall notify the Division Director, the Chief Engineer, Inspector, OSM and other interested parties (including appropriate government agencies).

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

The DMLR Inspector shall, **within two days**, conduct an onsite investigation of the proposed exemption site to:

- determine if the site meets the exemption criteria (4 VAC 25-130-707.11 and 4 VAC 25-130-707.12; and,
- collect any available data that would assist the DMLR’s determination of exemption eligibility, such as -
 1. documentation of the site conditions.
 2. amount of government financing (and type).
 3. projected cost of project.
 4. whether the government authorization has been given to proceed with the project.
 5. amount of coal removed or to be removed during the project term; where the coal is or will be sold; whether coal removal meets the engineering necessity for the project; and whether the coal is located within the project’s boundaries.

The Inspector shall submit the data and onsite investigation report (**DMLR-ENF-044**) to the RPM. The investigation report shall include the Inspector’s finding or recommendation as to whether the site does or does not meet the exemption criteria.

Exemption Review Process -

The RPM shall:

- review the request and the Inspector’s finding or recommendation as to whether the exemption is permissible for the site under the Act and regulations.
- provide notice of the DMLR’s intent to consider the request to all parties with an identified interest in the exemption determination (may include state and local agencies, appropriate Planning Districts, the mineral owner, the surface owner, the state OSM field office, the site contractor, utilities, or others).

DIVISION OF MINED LAND RECLAMATION	PROCEDURE NO.	2.1.06
---	----------------------	--------

PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

The notice to interested parties may be oral (but documented in the exemption request file) or in writing. The notice shall explain the person's right to submit written comments or concerns to the Division Director or RPM within a reasonable time period (within 15 workdays, unless unique circumstances require an extended period).

Evaluation of data and comments - The RPM, prior to preparing the Division Director's written decision to approve or disapprove the exemption request:

- shall consider the comments submitted from the DM, DMLR, and any interested parties.
- shall consider the project documentation or reports provided by the funding agency(ies).
- may request additional information from any involved party or require additional investigation by the Inspector.
- shall require that an "engineering necessity determination" be prepared by appropriate staff.

Exemption Determination -

Once the RPM receives and considers the additional information requested from the interested parties and the engineering necessity determination, a final written determination to approve or disapprove the exemption request shall be prepared for the Division Director's signature. If the operation is not determined to be exempt, the applicant shall be required to obtain a Chapter 19 permit for the site.

After the final determination is signed by the Division Director, the RPM shall immediately copy the applicant with the agency's decision. A copy of the determination shall be concurrently mailed to each interested party.

The final determination shall be made within seven working days from receipt of any additional information.

Exemption Approval/Inspection -

The Inspector will be copied with the exemption determination letter, and for each exempt site shall:

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

- conduct at least monthly inspections of the site to verify that the project is being conducted in accordance with 4 VAC 25-130-707.11 and 4 VAC 25-130-707.12 and the exemption justification submitted to and approved by the DMLR.
- document site conditions (mining equipment present and areas of coal removal); and provide a summary of the project progress and cost, amount and type of government funding, total tonnage of coal removed, and revenues received from the sale of the coal.
- respond to citizen complaints concerning the project per Procedure #3.1.06. The Inspector shall also refer the complainant to the funding agency(ies), and communicate the complaint directly to the funding agency(ies).
- report to the RPM of any instance where the site activities or conditions appear to be inconsistent with the exemption determination.

Should the Inspector determine that coal removal at the site has exceeded the limits anticipated in the exemption determination, and the coal removal is not an engineering necessity for the project (assistance may be obtained from the Chief Engineer, or technical personnel), immediate action to halt the coal removal operation shall be taken. (see Procedures # 2.1.03, 3.3.01, and 3.3.08).

Final Inspection -

The Inspector shall conduct a close out inspection of the project once coal removal is completed. The inspection report (**DMLR-ENF-044**) shall document the total project cost, amount of public financing, and the total revenues received from the coal removed.

Record keeping - The Area Supervisor shall forward a copy of each inspection report concerning the exempted site to the RPM. The Inspector shall retain a copy of the inspection reports for future reference.

The RPM shall maintain a file of each exemption request received by the DMLR. The record shall include, but not be limited to:

1. the exemption request, and the current status of the exemption.
2. a specific location description of the site.

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	June 20, 2005
SUBJECT	Exemptions for Government Financed Projects	Section	Enforcement
		Last Revised	3-12-97

3. identification of the government financing agency(ies) and respective contact persons.
4. a list of all interested persons notified.
5. documentation or copies of comments, concerns, and data the DMLR reviewed (both internal and material from interested parties).
6. the “engineering necessity determination” and supporting rationale.
7. the DMLR determination letter.
8. a copy of each inspection and close out report completed and submitted by the Inspector.
9. all other documents or materials generated or collected relative to the project.

The RPM shall ensure each file is maintained and updated - up to and including the submittal of the Inspector’s close out report.

After receipt of the close out report, the RPM shall review the file and indicate in writing as to whether the agency met its obligations in the matter. The file shall then be forwarded to Central Files.

ATTACHMENT B

DIVISION OF MINES GUIDELINES FOR APPLICATION OF REGULATORY STANDARDS MANUAL	
COAL MINE SAFETY ACT	CHAPTER 14.2
ARTICLE 5	LICENSING OF MINES
Issue Date: 4/10/00 Revised Date: 4/15/04	Page 1 of 1

Section 45.1-161.57. A . License Required for Operation of Coal Mines

In determining when a separate mine license is required, the inspector should consider the following:

- Are the operations being performed at the site using different mining methods, such as auger, strip and/or underground mining?
- Are there separate entities operating at the site, such as different companies, different ownership, and operators?
- Are operational activities in different geographical areas?
- Are mining activities projected to mine together within the mine plan?

A separate mine license is required for each different method of mining employed at any site. Where there are different companies, ownership, and operators in the same location a separate mine license is required. If surface equipment owned by the same operator is operating in different geographical areas not connected and not within a reasonable travel time, then separate licenses should be required. When operational activities are not connected and projected to mine together, a separate mine license for each activity need not be secured.

A current mine license is required through initial reclamation of a previously licensed surface or underground mine site.

A current mine license is not required for harvesting trees if control has been vested with a contracted service for timbering only. This activity would fall under VOSH standards and not the Virginia Coal Mine Safety Act (MSA).

A mine license is not required for a site conducting coal removal for sale if that site is not principally a coal mine. This section of the MSA requires a mine license prior to the “operation of any coal mine”. Excavation work for sites such as highway construction, business construction, and home construction are not considered a coal mine as long as the coal removed is necessary for the site construction. However, if the site construction and related coal removal expands beyond the area relevant to the construction of such site, then a mine license may be required. This should be coordinated with the DMLR’s determination whether a coal surface mining permit is required for the activities.